

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PEDRO RODRIGUEZ,

Plaintiff,

v.

R. DIAZ, et al.,

Defendants.

No. 1:20-cv-00944-NONE-JLT (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
ACTION WITHOUT PREJUDICE

(Doc. No. 16)

Plaintiff Pedro Rodriguez is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action under 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 8, 2021, the assigned magistrate judge filed a screening order, finding that plaintiff's complaint fails to state a claim on which relief can be granted and violates Federal Rule of Civil Procedure 20. (*Id.* at 12.) The magistrate judge directed plaintiff to file an amended complaint within 21 days. (*Id.* at 12.) On February 24, 2021, and April 2, 2021, the judge granted plaintiff extensions of time to comply with the screening order. (Doc. Nos. 10, 12.) Nonetheless, plaintiff failed to file an amended complaint within the time provided.

Therefore, on May 13, 2021, the magistrate judge filed findings and recommendations, recommending that this action be dismissed without prejudice for plaintiff's failure to obey court orders. (Doc. No. 16.) The findings and recommendations were served on plaintiff and provided

1 him 14 days to file objections thereto. (*Id.* at 2.) On June 7, 2021, the magistrate judge granted
 2 plaintiff a 30-day extension of time to file objections. (Doc. No. 18.) On July 7, 2021, instead of
 3 filing objections, plaintiff filed another request for an extension of time to file an amended
 4 complaint. (Doc. No. 19.) The magistrate judge issued an order denying that request for an
 5 extension as moot because plaintiff's prior requests seeking the same relief had already been
 6 denied and because findings and recommendations recommending dismissal were already
 7 pending. (Doc. No. 20.)¹ Nonetheless, in an abundance of caution, the undersigned has reviewed
 8 plaintiff's most recent request for an extension of time as though it contains plaintiff's objections
 9 to the pending findings and recommendations.

10 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
 11 *de novo* review of this case. Having carefully reviewed the entire file, the court finds the findings
 12 and recommendations to be supported by the record and proper analysis. The applicable
 13 screening order issued on February 8, 2021. (Doc. No. 8.) Plaintiff was granted several
 14 extensions of time to file an amended complaint in an attempt to cure the noted deficiencies and
 15 was warned when his second such request was granted that he would not be given additional
 16 extensions of time unless he offered a sufficient explanation for why he needed additional time to
 17 file an amended complaint. (Doc. No. 12.) Plaintiff's May 6, 2021 (third) request for an
 18 extension of time to amend his complaint failed to offer any such explanation. (*See* Doc. No. 13.)
 19 Accordingly, the magistrate judge denied that extension request. (Doc. No. 14.) That denial was
 20 justified. In his most recent extension of time request, plaintiff now asserts that officials at his
 21 place of incarceration are "trying to harm, maim, or kill" him by, among other things, refusing to
 22 give him a cane. (Doc. No. 19.) He indicates that he "is now falling on [his] face without [a]
 23 cane" and is "confined to [his] bed without medical aid." (*Id.*) The court accepts this assertion as
 24 true for purposes of its analysis, but nonetheless finds no reason to depart from the findings and

25 ¹ On July 23, 2021, plaintiff filed an interlocutory appeal from the magistrate judge's July 8,
 26 2021 order denying plaintiff's (fourth) motion for an extension of time to file a first amended
 27 complaint. (Doc. No. 21.) Even assuming that appeal was properly taken, the undersigned
 28 concludes that it would not divest the court of jurisdiction to review the pending findings and
 recommendations because the appealed order (issued July 8, 2021) post-dates the findings and
 recommendations to dismiss (issued May 13, 2021). Put another way, the findings and
 recommendations under review predate and therefore in no way rely on the July 8, 2021 order.

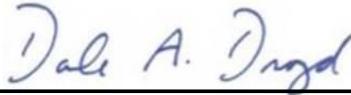
1 recommendations. Crucially, no such medical impediment was ever mentioned by plaintiff in any
2 of his numerous prior requests for a further extension of time to file an amended complaint. In
3 sum, given the detailed explanations of the law provided by the magistrate judge in the screening
4 order, nothing in the record suggests why plaintiff has been impeded in his ability to file an
5 amended complaint for the past six months.

6 Accordingly,

- 7 1. The findings and recommendations issued on May 13, 2021 (Doc. No. 16) are
8 adopted in full;
- 9 2. This action is dismissed without prejudice for plaintiff's failure to obey court
10 orders; and,
- 11 3. The Clerk of the Court is directed to assign a district judge to this action for
12 purposes of closure and to close this case.

13 IT IS SO ORDERED.

14 Dated: August 24, 2021


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UNITED STATES DISTRICT JUDGE

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